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5 UNITED STATES DISTRICT COURT
6 DISTRICT OF NEVADA
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8 STACY HADDEN,

9 Plaintiff,

10 vs.

11 NANCY A. BERRYHILL, Acting Commissioner
12 of Social Security,

13 Defendant.

Case No. 2:17-cv-02817-MMD-GWF

ORDER

14 This matter is before the Court on the screening of Plaintiff's Amended Complaint (ECF
15 No. 5), filed on December 14, 2017.

16 **BACKGROUND**

17 The Court granted Plaintiff's Application to Proceed In Forma Pauperis (ECF No. 1) on
18 November 21, 2017. The Court screened Plaintiff's Complaint pursuant to 28 U.S.C. § 1915(e)
19 and dismissed her Complaint with leave to amend. The Court set forth the requirements to
20 sufficiently allege a social security appeal and instructed Plaintiff to correct noted deficiencies. *See*
21 ECF No. 3.

22 Upon granting a request to proceed *in forma pauperis* and granting leave to amend, a court
23 must additionally screen a complaint pursuant to 28 U.S.C. § 1915(e). Specifically, federal courts
24 are given the authority to dismiss a case if the action is legally "frivolous or malicious," fails to
25 state a claim upon which relief may be granted, or seeks monetary relief from a defendant/third
26 party plaintiff who is immune from such relief. 28 U.S.C. § 1915(e)(2). A complaint, or portion
27 thereof, should be dismissed for failure to state a claim upon which relief may be granted "if it
28 appears beyond a doubt that the plaintiff can prove no set of facts in support of his claims that

1 would entitle him to relief.” *Buckey v. Los Angeles*, 968 F.2d 791, 794 (9th Cir. 1992). When a
2 court dismisses a complaint under § 1915(e), the plaintiff should be given leave to amend the
3 complaint with directions as to curing its deficiencies, unless it is clear from the face of the
4 complaint that the deficiencies could not be cured by amendment. *See Cato v. United States*, 70
5 F.3d 1103, 1106 (9th Cir. 1995).

6 To satisfy the screening requirements with respect to social security appeals, a plaintiff must
7 set forth the following: (1) the plaintiff must establish that she has exhausted her administrative
8 remedies pursuant to 42 U.S.C. § 405(g), and that the civil action was commenced within sixty
9 days after notice of a final decision; (2) the complaint must indicate the judicial district in which
10 the plaintiff resides; (3) the complaint must state the nature of the plaintiff's disability and when the
11 plaintiff claims she became disabled; and (4) the complaint must contain a plain, short, and concise
12 statement identifying the nature of the plaintiff's disagreement with the determination made by the
13 Social Security Administration and show that the plaintiff is entitled to relief. *Montoya v. Colvin*,
14 2016 WL 890922, at *2 (D. Nev. Mar. 8, 2016) (citing *Soete v. Colvin*, 2013 WL 5947231, *2 (D.
15 Nev. Nov. 4, 2013); *Pitcher v. Astrue*, 2012 WL 3780354, *1 (D. Nev. Aug. 30, 2012)).

16 Plaintiff does not sufficiently allege the foregoing requirements to maintain a social security
17 appeal. Plaintiff does not allege that she exhausted her administrative remedies, that she timely
18 commenced this case, or that she resides in this judicial district. Further, Plaintiff does not provide
19 any allegations as to why the Social Security Administration's determination denying her benefits
20 is wrong. Plaintiff must provide a short and plain statement identifying the basis of her
21 disagreement with the Social Security Administration's determination and must make a showing
22 that she is entitled to relief.

23 The Court will allow Plaintiff leave to amend to correct the noted deficiencies. If Plaintiff
24 elects to proceed in this action by filing a second amended complaint, she is informed that the court
25 cannot refer to a prior pleading in order to make her second amended complaint complete. Local
26 Rule 15–1 requires that an amended complaint be complete in itself without reference to any prior
27 pleading. This is because, as a general rule, an amended complaint supersedes the original
28 complaint. *See Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir.1967). Once Plaintiff files a second

1 amended complaint, the original pleading no longer serves any function in the case. Therefore, in
2 an amended complaint, as in an original complaint, each claim and the involvement of each
3 defendant must be sufficiently alleged. Plaintiff is advised that litigation will not commence upon
4 the filing of a second amended complaint. Rather, the Court will need to conduct an additional
5 screening of the second amended complaint pursuant to 28 U.S.C. § 1915A. If Plaintiff fails to file
6 a second amended complaint or fail to cure the deficiencies identified above, the Court will
7 recommend that the complaint be dismissed with prejudice Accordingly,

8 **IT IS HEREBY ORDERED** that Plaintiff shall have until **January 19, 2018** to file an
9 amended complaint correcting the noted deficiencies.

10 DATED this 20th day of December, 2017.

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13 GEORGE FOLEY, JR.
14 United States Magistrate Judge
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